

Passed by both Houses



New South Wales

Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

Act No , 2018

An Act to amend the *Road Transport Act 2013*, *Roads Act 1993* and other roads legislation to make further provision with respect to the enforcement of that legislation; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Road Transport Act 2013 No 18

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

alcohol or other drug related driving offence means an offence that:

- (a) involves the presence of alcohol in a person's breath or blood or the presence of a drug (other than alcohol) in a person's oral fluid, blood or urine, and
- (b) is prescribed by the statutory rules.

[2] Section 4 (1), definition of "drug"

Insert at the end of paragraph (c):

, and

- (d) any other substance that, when taken by an ordinary person, is reasonably likely to deprive the person of, or impair, his or her normal mental or physical faculties (whether temporarily or permanently).

[3] Section 4 (5)

Insert after section 4 (4) including the note:

- (5) For the purposes of this Act, an offence is taken to have been ***dealt with by way of penalty notice*** if a penalty notice has been issued for the offence and:
 - (a) the whole or any part of the penalty specified in the notice has been paid, or
 - (b) the penalty specified in the notice has not been paid, the person to whom it was issued has not elected to have the matter dealt with by a court and the time for the person to have the matter so dealt with has lapsed.

[4] Section 9 Determination of "first offence" and "second or subsequent offence"

Insert after section 9 (2):

(2A) **Second or subsequent offence where previous offence dealt with by way of penalty notice**

If a person is convicted of an offence against this Act (the ***new offence***), that offence is a ***second or subsequent offence*** if:

- (a) within the period of 5 years immediately before being convicted of the new offence, the person committed an alcohol or other drug related driving offence (the ***previous offence***), and
- (b) that previous offence:
 - (i) was against the same provision as, or was an equivalent offence to, the new offence, and
 - (ii) was dealt with by way of penalty notice, and
- (c) the occasion when the new offence occurred was different from the occasion when the previous offence occurred.

[5] Section 9 (5)

Insert "or (2A) (b) (i)" after "subsection (2) (a) (iii)".

[6] Section 59 Cancellation or suspension of driver licence for certain speeding offences or alcohol or other drug related driving offences

Insert “or alleged alcohol or other drug related driving offence” after “speeding offence” in section 59 (1).

[7] Section 59 (4A)

Insert after section 59 (4):

(4A) For the purposes of subsection (4), a period not exceeding 3 months may be specified in relation to an alleged alcohol or other drug related driving offence.

[8] Sections 110 (1)–(3) and 111 (1) and (3)

Omit “10 penalty units” and “20 penalty units” wherever occurring.

Insert instead “20 penalty units” and “30 penalty units”, respectively.

[9] Section 205 Disqualification for certain major offences

Insert “or committed a major offence during that period that was dealt with by way of penalty notice” before “(whether of the same or a different kind)” in section 205 (2) and (3).

[10] Section 209 Definitions

Omit “that is a second” wherever occurring in paragraphs (d) and (f) of the definition of *mandatory interlock offence* in section 209 (1).

Insert instead “that is a first offence or a second”.

[11] Section 209 (1), definition of “mandatory interlock offence”, note

Omit the note. Insert instead:

Note. Section 9 (2) and (2A) specify the circumstances in which an offence is a second or subsequent offence (including instances in which the first offence was dealt with by way of penalty notice).

[12] Section 211 Mandatory interlock orders

Insert after the matter relating to an offence against section 110 (1) (a) or (b), (2) (a), (b) or (c) or (3) (a), (b) or (c) in the Table to the section:

An offence against section 110 (4) (a), (b) or (c) that is a first offence by the offender for any other alcohol-related major offence	3 months	6 months	12 months
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[13] Section 211, Table

Omit the matter relating to an offence against section 112 (1) (a), (b) or (c).

Insert instead:

An offence against section 112 (1) (a), (b) or (c) that is a first offence by the offender for any other alcohol-related major offence	6 months	9 months	24 months
An offence against section 112 (1) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence	9 months	12 months	48 months

[14] Section 212 Interlock exemption orders

Insert at the end of section 212 (3) (b):

- , or
- (c) if the offender is convicted of an offence against section 110 (4) (a), (b) or (c) that is a first offence:
 - (i) that the making of a mandatory interlock order would cause severe hardship to the offender, and
 - (ii) that the making of an interlock exemption order is more appropriate in all the circumstances than the making of a mandatory interlock order.

[15] Section 212 (5)

Insert “(except in relation to a conviction for an offence against section 110 (4) (a), (b) or (c) that is a first offence)” after “must not be made”.

[16] Part 7.4, Division 2A

Insert after Division 2:

Division 2A Driver education programs relating to alcohol or other drugs

215C Education program for alcohol and other drug related driving offences

- (1) The Authority may, by notice in writing, require a person to undertake an alcohol or other drug education program specified in the notice if the person:
 - (a) has been found guilty of an offence against section 110, 111 or 112, or
 - (b) committed an offence against section 110 or 111 that was dealt with by way of penalty notice.
- (2) A notice under this section must specify the period within which the alcohol or other drug education program must be undertaken and must contain any other matters specified in the statutory rules.
- (3) The person to whom a notice is given under this section must undertake the program within the period specified by the notice or any longer period that the Authority may allow.
- (4) Any period of licence suspension, cancellation or other licence ineligibility relating to a person required to undertake an alcohol or other drug education program by a notice given under this section is extended until such time as the person has undertaken, and passed to the satisfaction of the Authority, the alcohol or other drug education program.
- (5) The Authority may, by notice in writing given to a person who fails to undertake an alcohol or other drug education program in accordance with this section, suspend any driver licence held by the person until such time as the person undertakes the program to the satisfaction of the Authority.

[17] Section 224 When immediate licence suspension notice may be issued by police officer

Insert after section 224 (1) (a):

- (a1) if it appears to a police officer (whether or not the same police officer) that the driver has committed an offence against section 110 (1), (2) or (3),

[18] Section 224 (4) (a) and (b)

Insert “(a1),” after “(a),” wherever occurring.

[19] Section 224 (4) (b1) and (b2)

Insert after section 224 (4) (b):

- (b1) if the driver holds a driver licence issued in this jurisdiction and is served with a penalty notice for an offence referred to in subsection (1) (a1)—a statement to the effect that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
 - (i) a period of 3 months elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
 - (iii) a decision is made not to enforce the penalty notice,
- (b2) if the driver is an authorised visiting driver and is served with a penalty notice for an offence referred to in subsection (1) (a1)—a statement to the effect that the driver’s authority to drive in this jurisdiction is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
 - (i) a period of 3 months elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
 - (iii) a decision is made not to enforce the penalty notice,

[20] Section 237 Definitions

Insert after paragraph (a) of the definition of *sanctionable offence* in section 237 (1):

- (a1) an offence against section 110 (4) or (5) or clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 (a *new offence*), but only if the person has been convicted of an alcohol-related major offence (within the meaning of Division 2 of Part 7.4) during the period of 5 years before the new offence was committed,

[21] Section 266 Definitions

Insert after paragraph (e) of the definition of *appealable decision* in section 266 (1):

- (e1) a decision of the Authority to suspend a person’s driver licence under section 215C,

[22] Schedule 1 Examples of statutory rule-making powers

Insert at the end of clause 1 (2) (p):

- , and
- (q) without limiting paragraph (n) or (o), alcohol or other drug education programs to be undertaken by holders of driver licences who have been

found guilty of, or have been issued a penalty notice in respect of, an offence under this Act or the statutory rules relating to the use of alcohol or other drugs.

Schedule 2 Amendment of other legislation

2.1 Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017

[1] Clause 24 Disqualifying offences

Insert “whether the previous offence resulted in a finding of guilt or was dealt with by way of penalty notice as referred to in section 4 (5) of that Act” after “a previous offence under that subsection” in clause 24 (3).

[2] Clause 24 (4A)

Insert after clause 24 (4):

- (4A) A person must not drive a taxi or hire vehicle that is being used to provide a passenger service if the person has committed an offence against section 110 (2) or 111 (1) of the *Road Transport Act 2013* that has been dealt with by way of penalty notice as referred to in section 4 (5) of that Act.

2.2 Road Transport (Driver Licensing) Regulation 2017

[1] Clause 35A Authority may extend provisional licence period for provisional P2 licences

Omit “section 224 (1) (c)” from clause 35A (1) (c).

Insert instead “section 224 (1) (a1) or (c)”.

[2] Clause 67A

Insert after clause 67:

67A Prescribed alcohol or other drug related driving offences

For the purposes of the definition of *alcohol or other drug related driving offence* in section 4 (1) of the Act, offences against section 110 (1), (2) or (3) or 111 (1) of the Act are prescribed.

[3] Clause 96 Interstate and international visitors

Insert after clause 96 (4) (n):

- (o) if, in the reasonable opinion of the Authority, the Authority could, under section 59 of the Act, suspend a NSW driver licence held by the visiting driver, if the driver were to hold such a licence, because of an alcohol or other drug related driving offence.

[4] Clause 96 (7A)

Insert after clause 96 (7):

- (7A) If the Authority forms an opinion that subclause (4) (o) applies to a visiting driver, the cessation of the exemption applies for the same period of time the driver would be suspended under section 59 of the Act if the driver held a NSW driver licence.

[5] Clause 96 (9)

Omit “(j) or (n)”. Insert instead “(j), (n) or (o)”.

2.3 Road Transport (General) Regulation 2013

[1] Clause 126 Driver licensing decisions

Omit “clause 96 (4) (g), (h) or (i)” from clause 126 (d).

Insert instead “clause 96 (4) (g), (h), (i) or (o)”.

[2] Schedule 5 Penalty notice offences

Insert in appropriate order under the heading *Road Transport Act 2013*:

Section 110 (1)–(3) (but only if the person has not been issued a penalty notice for an alcohol or other drug related driving offence, or convicted of the same or an equivalent offence, in the 5 years before the offence)	Class 1	Level 7
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Section 111 (1) (but only if the person has not been issued a penalty notice for an alcohol or other drug related driving offence, or convicted of the same or an equivalent offence, in the 5 years before the offence)	Class 1	Level 7
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2.4 Roads Act 1993 No 33

Part 9, Division 7

Insert after Division 6:

Division 7 **Trespassing on Sydney Harbour Bridge and other major bridges and tunnels**

144G **Damage, disruption or obstruction of Sydney Harbour Bridge and other major bridges and tunnels**

- (1) A person must not enter, remain on, climb, jump from or otherwise trespass on any part of the Sydney Harbour Bridge or any other major bridge or tunnel if that conduct:
- (a) causes damage to the bridge or tunnel, or
 - (b) seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel, or
 - (c) is an offence punishable by imprisonment or is an offence arising under the *Summary Offences Act 1988*.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (2) Without limiting subsection (1) (b), a person seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel if, as a result of the person’s conduct, the bridge or tunnel (or any part of the bridge or tunnel) is closed or vehicles or pedestrians are redirected.
- (3) Nothing in this section prohibits conduct in accordance with the consent or authority of RMS, the NSW Police Force or other public authority.
- (4) It is a defence to the prosecution of an offence against this section if the person charged proves that the person had a reasonable excuse for the conduct concerned.
- (5) For the purposes of subsection (4) but without limiting that subsection, a person has a reasonable excuse if the conduct arose from a mechanical fault or breakdown of a motor vehicle.

- (6) In this section:
- major bridge or tunnel* means a bridge or tunnel prescribed by the regulations for the purposes of this section.
 - vehicle* includes a train.